

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE, SUITE 900
SEATTLE, WASHINGTON 98101**

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|-------------------------------|---|--------------------------------|
| In the Matter of: |) | ORDER |
| |) | SECTION 13(a) |
| Newco, Inc., d/b/a/ |) | |
| Cascade Columbia Distribution |) | |
| Company |) | |
| |) | |
| Seattle, |) | FEDERAL INSECTICIDE, FUNGICIDE |
| Washington, |) | AND RODENTICIDE ACT |
| |) | |
| |) | |
| Respondent. |) | Docket No. FIFRA-10-2018-0268 |
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I. Authority

1. This Stop Sale, Use, or Removal Order ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 13(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that, *inter alia*, the pesticide or device is in violation of any provision of FIFRA or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. This authority has been delegated from the EPA Administrator to the EPA Region 10 Director of the Office of Compliance and Enforcement.
3. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.
4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

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5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” *See also* 40 C.F.R. § 152.15.
6. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” This section also defines “labeling” as “all labels and all other written, printed, or graphic matter . . . (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”
7. According to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if, “the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section [3(d) of FIFRA], is adequate to protect health and the environment.”
8. According to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), a pesticide is misbranded if, “the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section [3(d) of FIFRA], is adequate to protect health and the environment.”
9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”
10. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”
11. According to 40 C.F.R. § 152.3, a product becomes “‘released for shipment’ when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment.”
12. In accordance with 40 C.F.R. § 152.132, “The registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed ‘supplemental distribution’ and the product is referred to as a ‘distributor product.’ The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.”

13. In accordance with 40 C.F.R. § 152.132(d), the label of the distributor product [must be] the same as that of the registered product, save for certain enumerated exceptions.

II. Background

14. Newco, Inc., d/b/a/ Cascade Columbia Distribution Company ("Respondent") is a corporation incorporated under the laws of the State of Washington. Therefore, Respondent meets the definition of a "person" in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
15. Since at least February 10, 2017, Respondent has distributed and sold the pesticide product Sodium Hypochlorite Solution 12.5% (EPA Reg. No. 10897-26-73015) under a supplemental distributor and repackaging agreement with the base registrant Hasa Inc. Pursuant to the agreement with Hasa Inc., Respondent produces the distributor product Sodium Hypochlorite Solution 12.5% under Hasa Inc.'s registration for Hasachlor (EPA Reg. No. 10897-26).
16. EPA accepted the label of Hasachlor on October 30, 2009.
17. Sodium Hypochlorite Solution 12.5% is a pesticide as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Misbranded Pesticides

18. On February 10, 2017, a federally credentialed inspector from the Oregon Department of Agriculture ("ODA") conducted a Producer Establishment Inspection at Respondent's establishment, located at 14200 Southwest Tualatin-Sherwood Road, Sherwood, Oregon 97140 ("Oregon Establishment").
19. During the February 10, 2017, inspection of the Oregon Establishment, the ODA inspector observed and documented the pesticide product, Sodium Hypochlorite Solution 12.5%, packaged and labeled in the manner in which the product is distributed.
20. On September 13, 2017, EPA Region 10 conducted a Producer Establishment Inspection at Respondent's establishment, located at 6900 Fox Avenue South, Seattle, Washington 98108 ("Washington Establishment").
21. During the September 13, 2017, inspection of the Washington Establishment, the EPA inspectors observed and documented the product Sodium Hypochlorite Solution 12.5% packaged and labeled in the manner in which the product is distributed.
22. During the February 10, 2017, and September 13, 2017, inspections, the ODA inspector and the EPA inspectors documented the labels used on the Sodium Hypochlorite Solution 12.5% that were packaged and labeled in the manner in which the product is distributed. The ODA

inspector and the EPA inspectors also obtained label specimens of the label Respondent has used on the Sodium Hypochlorite Solution 12.5% since January 1, 2013.

23. The label for Sodium Hypochlorite Solution 12.5% observed and collected during the February 10, 2017, and September 13, 2017, inspections did not match the October 30, 2009 accepted label for Hasachlor in the following ways:
- (a) The statement "Harmful if swallowed or absorbed through skin" was missing from the "Hazards to Humans and Domestic Animals" section.
 - (b) The statement "Do not mix with other chemicals" was missing from the "Physical and Chemical Hazards" section.
 - (c) The statement "Keep this product in a tightly closed vented container, when not in use" was missing from the "Storage and Disposal," section.
24. As a result of the label deficiencies detailed in Paragraph 23, above, the label for the pesticide product Sodium Hypochlorite Solution 12.5% contains neither directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section [3(d) of FIFRA], is adequate to protect health and the environment, nor a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this FIFRA, is adequate to protect health and the environment. Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G).

Product Distribution and Sale

25. As stated in Paragraph 19, above, during the February 10, 2017, ODA inspection of the Oregon Establishment, the ODA inspector observed and documented containers of Sodium Hypochlorite Solution 12.5% packaged and labeled in the manner in which the product is distributed. This constitutes a "release for shipment" as that term is defined by 40 C.F.R. § 152.3 and a "distribution or sale" as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3.
26. During the September 13, 2017, Inspection, EPA inspectors collected sales records of Sodium Hypochlorite Solution 12.5% from Respondent's Washington Establishment documenting at least 25 shipments of Sodium Hypochlorite Solution 12.5%. This constitutes at least 25 "distributions or sales" as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3.
27. As stated in Paragraph 21, above, during the September 13, 2017, EPA inspection of the Washington Establishment, EPA inspectors observed and documented containers of Sodium Hypochlorite Solution 12.5% packaged and labeled in the manner in which the product is distributed. This constitutes a "release for shipment" as that term is defined by

40 C.F.R. § 152.3 and a “distribution or sale” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3.

III. Basis for the Order

28. As stated in Paragraph 17, above, the Sodium Hypochlorite Solution 12.5% product (EPA Reg. No. 10897-26-73015) is a pesticide as defined at Section 2 of FIFRA, 7 U.S.C. § 136.
29. The labeling deficiencies discussed in Paragraphs 23 and 24, above render the Sodium Hypochlorite Solution 12.5% product misbranded as that term is defined in Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G).
30. As discussed in Paragraphs 25 through 27, above, EPA has reason to believe on the basis of inspections that Respondent distributed or sold and intends to distribute or sell the pesticide product Sodium Hypochlorite Solution 12.5% as the term “to distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3.
31. Therefore, EPA has reason to believe on the basis of inspection that the distribution and sale of the product Sodium Hypochlorite Solution 12.5% constitutes the distribution of a misbranded pesticide in violation of FIFRA in accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

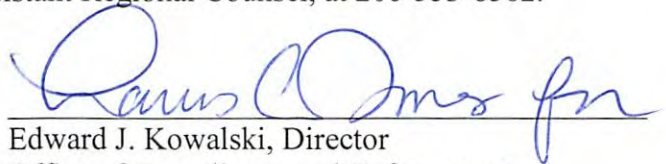
IV. Order

32. Pursuant to the authority of Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders Respondent to **immediately cease** the sale, use, or removal of the misbranded pesticide product Sodium Hypochlorite Solution 12.5% (EPA Reg. No. 10897-26-73015), (“Violative Product”) under its ownership, control, or custody, wherever such products are located, except in accordance with the provisions of this Order.
33. This Order shall extend to all quantities of the Violative Product intended for sale, distribution, and/or any stocks returned to Respondent from its customers.
34. The Violative Product shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery, for any reason, unless approved by the EPA in writing. Any proposal for movement of the Violative Product shall be submitted to Andrew Landry at U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900 (OCE-101), Seattle, Washington 98101, or at Landry.Andrew@epa.gov, and shall include:

- (a) The purpose for which the movement is being requested;
 - (b) An accounting of the quantities of product to be moved, including location(s), quantities from each location and container size for the products to be moved; and
 - (c) The destination location to which the product will be moved.
35. Within 30 days of receipt of this Order, Respondent must provide a written response describing the steps it will take to comply with FIFRA to Mr. Andrew Landry at U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900 (OCE-101), Seattle, Washington 98101, or at Landry.Andrew@epa.gov. Mr. Landry may be reached by telephone at (206) 553-1504. Respondent shall include in the written response a current inventory of all Violative Products. The inventory shall specify the location(s) where the products are held, quantities, and container sizes.
36. Respondent may seek federal judicial review of the Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136n. The issuance of this Order does not constitute a waiver by the EPA of its remedies, either judicial or administrative, under FIFRA or any other federal environmental law to address this matter or any other matters of unlawful acts not specified in this Order.
37. Any person violating the terms or provisions of this Order is subject to penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
38. This Order is effective immediately upon receipt by Respondent or any agents of Respondent.
39. This Order shall remain in effect unless and until vacated, revoked, terminated, suspended, or modified in writing by EPA.
40. If any provision or provisions of this Order is/are subsequently held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and they shall remain in full force and effect.

V. Other Matters

41. For any additional information about this Order, please contact Mr. Andrew Landry at 206-553-1504. For any legal matters concerning this Order, including questions from legal counsel, please contact Brett Dugan, Assistant Regional Counsel, at 206-553-8562.



Edward J. Kowalski, Director
Office of Compliance and Enforcement